

State Board of Embalmers and Funeral Directors

**January 25, 2012
Division of Professional Registration
3605 Missouri Blvd
Jefferson City, MO 65109**

OPEN MINUTES

The meeting of the State Board of Embalmers and Funeral Directors was called to order by D. Todd Mahn, Chairman at 8:35 a.m.

Roll Call

Board Members Present

D. Todd Mahn, Chair
James Reinhard, Vice Chair
John McCulloch, Secretary
Gary Fraker, Member
Archie Camden, Public Member

Board Members Not Present

Martin Vernon, Member

Staff Present

Sandy Sebastian, Executive Director
Lori Hayes, Inspector
Tabatha Lenzini, Administrative Office Support
Sharon Euler, Division Legal Counsel

Approval of Open Agenda

A motion was made by James Reinhard and seconded by Archie Camden to approve the agenda. Motion carried with Gary Fraker and John McCulloch voting in favor with no votes in opposition. Martin Vernon not present for the meeting.

Executive Director Report

Sandy Sebastian gave an overview on the financial examination process.

Legal Counsel Report

Sharon Euler reported that the Buescher case pending in Cole County Circuit Court has a status conference set. Sharon reported that there was no new news relating to NPS.

Don Otto reported that the NPS receivership has determined that if a funeral home got money out of the orphan contract escrow account, they are sending out 1099's to the funeral home and reporting that as income to the funeral home and your getting a 1099 if you're not a corporation; a partnership or a sole proprietor.

Approval of Open Minutes

A motion was made by Gary Fraker and seconded by Archie Camden to approve the following Open Examination Committee Minutes:

- December 7, 2011 Examination Committee
- December 13, 2011 Examination Committee
- December 22, 2011 Examination Committee
- January 6, 2012 Examination Committee
- January 13, 2012 Examination Committee

Motion carried with James Reinhard and John McCulloch voting in favor with no votes in opposition. Martin Vernon not present for the meeting.

Motion to Close

Motion made by Gary Fraker and seconded by John McCulloch to go into closed for #2. Motion carried with James Reinhard and Archie Camden voting in favor with no votes in opposition. Martin Vernon not present for the meeting.

Proposed Rules

Insurance Funded Preneed Contracts

Amendment to Annual Reporting Requirements

The draft rules were reviewed and discussed among the board members and also with the public in attendance at the meeting.

Proposed Rule: Insurance Funded Preneed Contracts

1. An insurance funded preneed contract is a preneed contract to be funded by payments or proceeds from an insurance policy or from a deferred annuity contract that is not classified as a variable annuity and has death benefit proceeds that are never less than the sum of premiums paid. (§436.405(3), RSMo.)

2. Any preneed contract, as defined in Chapters 333 and 436, RSMo, that is funded by payments or proceeds from any life insurance policy or annuity must comply with the provisions of Chapters 333 and 436, RSMo, and accompanying regulations regardless of when or from whom the policy was purchased or whether the seller received any form of commission or compensation from any source when the preneed contract is formed. (§436.405 and §436.450, RSMo.)

3. An insurance funded preneed contract is sold when the seller agrees to act as a seller for an insurance funded preneed contract, as defined in the statutes. (§436.405(3), RSMo.)

4. Any person agreeing to act as a seller for an insurance funded preneed contract must be licensed as a seller. (§333.320.1 and §436.415.2, RSMo.)

5. A person or entity engages in the practice of being a seller and must hold a seller license if the person or entity is named as the owner (under prior law) or beneficiary of an insurance policy or annuity, if the ownership, assignment or being named as beneficiary of the insurance policy or annuity occurred after August 13, 1982, and there is an agreement between the seller and the consumer that the proceeds of any insurance policy or annuity are to be used to pay for final disposition. (§333.320.1 and §436.415.2, RSMo.)

6. For each preneed contract funded by any insurance policy or annuity, the seller shall maintain in the file, in addition to the other records required by law, a copy of the insurance policy or annuity contract and evidence of the assignment or being named beneficiary. (§436.465, RSMo.)

7. No preneed contract, as defined in the statutes, is formed if there is no agreement between the purchaser and the seller for any final disposition arrangements and no payment is made or promised to be made (other than pursuant to an at-need contract) for the goods and services to be provided at death. (§436.405(7), RSMo)

8. No preneed contract is formed by the act of a licensed insurance producer selling any life insurance product at the location of the seller unless there is also a preneed contract or other arrangement in which the seller agrees to act as a seller under the provisions of chapters 333 and 436, RSMo, and accompanying regulations. (§436.450.5, RSMo.)

D. Todd Mahn turned the chair over to James Reinhard, vice chairman, so that he could speak to the rule as a funeral director. Following his comments he returned to chair the meeting.

A motion was made by John McCulloch and seconded by Gary Fraker made the motion to not pursue the rule. James Reinhard and Archie Camden voted in opposition of the motion. Motion carried with D. Todd Mahn voting in favor to break the tie. Martin Vernon not present for the meeting.

Proposed Rule: Amendment to the annual reporting rule

1. For the seller annual report, if the seller is unable to validate the status and face value of the insurance policy and unable to obtain the certification from the insurance company, the following information shall meet the requirements of Section 436.460.4 for the reporting requirements for insurance funded preneed contracts.

- a. The name and address of the company issuing the policy or annuity funding the preneed;
- b. The amount of the policy or balance on account at the time the preneed contract was sold; and
- c. An attestation from the seller that since these accounts are funded by being insurance or annuity beneficiary or assignment, the seller has no ability to confirm the existence or amount of the policies or accounts.

A motion was made by John McCulloch and seconded by Gary Fraker to approve draft rule as proposed. Motion carried with James Reinhard and Archie Camden voting in favor with no votes in opposition. Martin Vernon not present for the meeting.

Fee Rule Discussion Regarding Per Contract Annual Reporting

Chairman recommendation is staff to go back and look at the fee rule and see if it is possible to charge separate fees for different contracts reported on the annual reports. Archie Camden stated he would like to see what hardship it will cause on staff and auditing staff to have different reporting fees for contracts. D. Todd Mahn said we are not here to protect the staff or how much money we can make in this office that the board was here to protect the public and I want to remember that.

Upcoming March Board Meeting Date/Location

The Board discussed the possibility of having the meeting in St. Louis at the end of March. Sandy indicated that the office would explore the options and anticipated we would need to look at 2 hotel bids in the downtown area and one outside downtown. The Board asked that they look for a location south.

Web Casting

Ken McGhee brought up the topic of web casting and shared that he would really like to see the board utilize the Division's Main Conference Room video capability.

MFDEA Legislative Day

Don Otto legislative day at the capitol February 28th.

Shelby Funeral Homes Inc. - Case 12-004-PV – Probation Violation Hearing

A motion was made by Gary Fraker and seconded by John McCulloch to ratify the chair recommendation for the request for continuance received from Shelby Funeral Home. Motion carried with James Reinhard and Archie Camden voting in favor with no votes in opposition. Martin Vernon not present for the meeting.

Motion to Close

A motion was made by John McCulloch and seconded by Gary Fraker pursuant to #1, #2, #8 and #9 to go in to closed session. Motion carried with James Reinhard and Archie Camden voting in favor with no votes in opposition. Martin Vernon not present for the meeting.

George Treaster dba White Funeral Home - Case 12-005-PV – Probation Violation Hearing

George Treaster asked attorney Sharon Euler if he could have a Settlement negotiation in closed session. A motion was made by Gary Fraker and seconded by Archie Camden to continue the hearing. Motion carried with Gary Fraker, James Reinhard, John McCulloch, Archie Camden voting in favor with no votes in opposition. Martin Vernon not present for the meeting.

A motion was made by Gary and seconded by John McCulloch to go in to closed for #1, #2 and #9. Motion carried with James Reinhard and Archie Camden voting in favor with no votes in opposition. Martin Vernon not present for the meeting.

Financial Examination Committee Process

John McCulloch asked for further clarification of wants guidelines for what the exam committee can do and the process that is followed. Sandy shared that once the examination report is completed the staff sends a letter of the findings of the audit to the seller and requests a response within 30 days; the committee reviews the examination and the response and if everything is resolved the committee closes the examination and the seller is notified of such. If the committee has concerns or are there are matters that require the attention of the full board the committee refers it to the board and may include a recommendation

Following that discussion Archie Camden asked what the status of the examination committee was and if it could proceed to operate. Chairman D. Todd Mahn recommends the exam committee to resume functioning.

Motion to Close

A motion was made by Gary Fraker and seconded by John McCulloch the meeting to close for #2. Motion carried with James Reinhard and Archie Camden voting in favor with no votes in opposition. Martin Vernon not present for the meeting.

Proposed Rule: Abandoned Preneed Funds

Motion made by Gary Fraker and seconded by Archie Camden to bring the proposed rule to the next board meeting for discussion. Motion carried with James Reinhard and John McCulloch voting in favor with no votes in opposition. Martin Vernon not present for the meeting.

Motion to Close

A motion was made by James Reinhard and seconded by Archie Camden to into closed session for #6. Motion carried with John McCulloch and Gary Fraker voting in favor with no votes in opposition.

Adjournment

Motion was made by Archie Camden and seconded by John McCulloch to adjourn at 3:35pm. Motion carried with no votes in opposition.

Executive Director: Sandy Sebastian

Approved by the Board on: 4 - 24-25-2012

MOTIONS TO GO INTO CLOSED SESSION

1. DISCIPLINE

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline

2. LEGAL ACTIONS/LITIGATIONS/PRIVILEGED COMMUNICATIONS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney

3. PROMOTING/HIRING/DISCIPLINING/FIRING EMPLOYEES

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency

4. DIAGNOSIS/TREATMENT OF DISCIPLINED LICENSEES

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (5) and Section 324.001.8 RSMo. for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees

5. EXAMINATION MATERIALS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (7) RSMo for reviewing testing and examination materials

6. EMPLOYEE PERFORMANCE RATINGS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (13) RSMo for making performance ratings pertaining to individual employees

7. APPLICATIONS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure

8. CLOSED MINUTES

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (14) and 324.017 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings

9. COMPLAINTS/ INVESTIGATIVE REPORTS/AUDITS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021 subsection (14) and section 620.010.14 subsection (7) RSMo for the purpose of discussing investigative reports and/or complaints and/or audits and/or other information pertaining to a licensee or applicant

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